

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Proposing rule making related to chiropractic physicians and providing an opportunity for public comment

The Board of Chiropractic hereby proposes to amend Chapter 43, “Practice of Chiropractic Physicians,” and Chapter 45, “Discipline for Chiropractic Physicians,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 147.76, 151.11 and 272C.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 147, 151 and 272C.

Purpose and Summary

The proposed amendments establish rules related to sexual misconduct, failure to maintain a patient record(s), and improper direct solicitation as new grounds for imposing Board discipline. The proposed amendments also define electronic records and set forth reporting requirements for a chiropractic insurance consultant. All other changes are technical in nature.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Professional Licensure Division are subject to the waiver provisions accorded under 645—Chapter 18.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received no later than 4:30 p.m. on May 15, 2018. Comments should be directed to:

Susan Reynolds
Professional Licensure Division
Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319-0075
Email: susan.reynolds@idph.state.ia.us

Public Hearing

A public hearing at which persons may present their views in writing will be held as follows:

May 15, 2018
7:30 to 8 a.m.

Fifth Floor Conference Room 526
Lucas State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Professional Licensure Division, Department of Public Health, and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 645—43.3(514F) as follows:

645—43.3(151,514F) Utilization and cost control review.

43.3(1) ~~The~~ Pursuant to Iowa Code section 514F.1, the board shall establish utilization and cost control review (UCCR) committee(s). A UCCR committee shall be established by approval of the board upon a showing that the committee meets the requirements of this rule. The name of each committee and a list of committee members shall be on file with the board and available to the public. As a condition of board approval, each committee shall agree to submit to the board an annual report which meets the requirements of this rule.

43.3(2) to 43.3(8) No change.

ITEM 2. Amend subrule 43.4(2) as follows:

43.4(2) All licensees who review chiropractic records for the purposes of determining the adequacy or sufficiency of chiropractic treatments, or the clinical indication for those treatments, shall ~~notify the board annually~~ indicate on their licensure renewals that they are engaged in those activities and of the location where those activities are performed.

ITEM 3. Amend subrules 43.10(4) and 43.10(8) as follows:

43.10(4) Electronic record keeping. When electronic records, which include both electronically created records and scanned paper records, are utilized, a chiropractic physician shall maintain either a duplicate hard-copy record or a backup electronic record.

43.10(8) Confidentiality and transfer of records. Chiropractic physicians shall preserve the confidentiality of patient records. Upon signed request of the patient, the chiropractic physician shall furnish such records or copies of the records as directed by the patient within 30 days. A notation indicating the items transferred, date of transfer and method of transfer shall be maintained in the patient record. The chiropractic physician may charge a reasonable fee for duplication of records; but may not refuse to transfer records for nonpayment of any fees. A written request may be required before the transfer of the record(s), including, for example, compliance with HIPAA regulations. In certain instances, a summary of the record may be more beneficial for the future treatment of the patient; however, if a third party requests copies of the original documentation, that request must be honored.

ITEM 4. Amend **645—Chapter 43**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 147, 151, 272C and 514F.

ITEM 5. Amend rule 645—45.2(151,272C) as follows:

645—45.2(151,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—45.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

45.2(1) No change.

45.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other chiropractic physicians in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average chiropractic physician acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a chiropractic physician in this state.

e. Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

~~*g.* Failure to maintain a patient's record(s) for a minimum of six years after the date of last examination or treatment. Records for minors shall be maintained for one year after the patient reaches the age of majority (18) or six years after the date of last examination or treatment, whichever is longer. Proper safeguards shall be maintained to ensure the safety of records from destructive elements. This provision includes both clinical and fiscal records.~~

45.2(3) to 45.2(27) No change.

45.2(28) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

a. Verbally or physically abusing a patient, client or coworker.

b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker, regardless of the patient's, client's, or coworker's consent.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

e. Engaging in a sexual or emotional relationship with a former patient when there is a risk of exploitation or harm to the patient, regardless of patient consent.

f. Failing to terminate the doctor-patient relationship before dating or having a sexual relationship with a patient. Such termination shall be done in writing and signed by both the patient and the chiropractic physician and placed in the patient's record. This paragraph shall not apply to a chiropractic physician who is treating the chiropractic physician's spouse. Further, a chiropractic physician shall not have consensual sexual relations with a former patient until three months after the termination of the doctor-patient relationship.

45.2(29) to 45.2(31) No change.

45.2(32) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

45.2(33) Failure to maintain a patient's record(s) for a minimum of six years after the date of last examination or treatment. Records for minors shall be maintained for one year after the patient reaches the age of majority (18) or six years after the date of last examination or treatment, whichever is longer. Proper safeguards shall be maintained to ensure the safety of records from destructive elements. This provision includes both clinical and fiscal records.

45.2(34) Engaging in direct solicitation of potential clients for pecuniary gain in a manner or in circumstances which constitute overreaching, undue influence, misrepresentation or invasion of privacy.